

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

GABRIELLA SULLIVAN, et al.,	)	3:22-cv-5403-DGE
	)	
Plaintiffs,	)	Tacoma, Washington
	)	
v.	)	September 23, 2022
	)	
BOB FURGUSON, et al.,	)	Motion Hearing
	)	
Defendants.	)	2:00 p.m.

VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE DAVID G. ESTUDILLO  
UNITED STATES DISTRICT JUDGE

Proceedings stenographically reported and transcribed  
With computer-aided technology

## APPEARANCES

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1 AFTERNOON SESSION

2 SEPTEMBER 23, 2022

3 THE CLERK: We are ready to go on the record when you  
4 are.

5 THE COURT: Good afternoon. Let's go ahead and go on  
6 the record.

7 THE CLERK: This is Sullivan, et al. versus Ferguson,  
8 et al., CV-22-5403-DGE.

9 Counsel for plaintiff, please make an appearance.

10 MR. PATTERSON: Pete Patterson from Cooper & Kirk for  
11 plaintiff. My colleague Will Bergstrom is here today. He  
12 will be doing the speaking for us.

13 MR. BERGSTROM: Good afternoon.

14 THE COURT: I think I heard Mr. Ard is here as well?

15 MR. ARD: Yes, Joel Ard. I will go back on mute and  
16 let Mr. Bergstrom do the speaking.

17 THE COURT: Thank you.

18 THE CLERK: For defendants.

19 MR. HUGHES: Assistant Attorney General Andrew Hughes  
20 here on behalf of Defendants Ferguson and Chief Batiste.

21 MS. SUMMERS: I am Ann Summers here with my colleague  
22 David Hackett on behalf of Defendants Prosecutor  
23 Dan Satterberg and Sheriff Cole-Tindall.

24 MS. PALMER: Christy Palmer, prosecuting attorney for  
25 Kitsap County. I am here for Defendants John Gese and

1 Chad Enright.

2 MS. CASTILLO: Callie Castillo on behalf of  
3 Defendants Norma Tillotson and Rick Scott of Grays Harbor.

4 MR. PEKELIS: Zach Pekelis for Proposed Intervener  
5 Defendant Alliance for Gun Responsibility.

6 THE COURT: I apologize, I am taking a bit of time  
7 and writing down names. For my purposes, I have the State  
8 being represented by Mr. Hughes, King County by Ms. Summers,  
9 Kitsap County by Ms. Palmer, and then Grays Harbor by  
10 Ms. Castillo; is that correct? Yes, okay. Perfect. And  
11 then today speaking on behalf of plaintiff will be  
12 Mr. Bergstrom?

13 MR. BERGSTROM: Yes.

14 THE COURT: And then on behalf of proposed  
15 intervenor, is Mr. --

16 MR. PEKELIS: Zach Pekelis on behalf of the Alliance  
17 for Gun Responsibility.

18 THE COURT: I am going to put "Alliance," just  
19 because it is easier.

20 Good afternoon. My name is David Estudillo. I am the  
21 District Judge assigned to this case. I appreciate you being  
22 here to discuss the case and the status.

23 I do understand there are three motions currently pending.  
24 One is the motion for intervenor Alliance. The other two  
25 being the motion to dismiss from Kitsap County and one from

1 King County. Those are on my list of things to get to.

2 Unfortunately, as you hopefully may appreciate, and maybe  
3 you don't, but you might appreciate that I only came on less  
4 than a year ago. When you get transferred on or come on  
5 board, you are given a docket with a number of motions that  
6 are already pending. As you are trying to get out of the  
7 motions that are pending, motions are filed in new cases  
8 being assigned to you. It takes a little time.

9 I have been digging myself out of my work that I was  
10 already assigned as soon as I got here. Obviously, that  
11 means I have to give and take at certain spots. That's why  
12 it has been a little bit slower on this case to get to the  
13 three pending motions. They are on my radar. I do hope to  
14 dedicate time to focus on them on a sooner-than-later basis.  
15 I will say it is difficult to give you an official timeline  
16 when I will get a response or orders out on those matters.  
17 Rest assured, they are on the radar and they will be  
18 addressed on a sooner-than-later basis.

19 With that said, there are a couple things we need to  
20 discuss. First is the issue of discovery. I know the  
21 parties have a dispute as to whether or not to engage in  
22 discovery. Currently, there is no motion before me for a  
23 formal motion to stay discovery. Just so that we are all  
24 clear, there is nothing currently staying discovery. I do  
25 want to hear from the parties more about their motion on the

1 need for discovery and/or the reason not to engage in  
2 discovery. I am not sure who wants to go first.

3 I think plaintiff, of course, indicates no discovery is  
4 needed, and I am not sure who officially did the complete  
5 response from the defense side. The State defendants  
6 indicate that some discovery is required.

7 From the plaintiff's side, any comments you want to make?  
8 I have read your position. Anything you think the Court  
9 should focus on on that issue at this point?

10 MR. BERGSTROM: No. I'll be very brief. I would  
11 highlight the *Bruen* test is new. It is fairly clear what  
12 matters and what doesn't here. The sort of facts that matter  
13 to the merits of this case are not the facts found in  
14 discovery. Things that are known facts about the laws and  
15 about the historical tradition, that is something we think we  
16 don't need discovery on.

17 The other two issues the State raises are damages and  
18 plaintiffs' standing. We don't think -- again, the  
19 plaintiffs' standing, we don't think facts that go to  
20 standing in this case are really in dispute here. We don't  
21 think discovery is necessary on those either.

22 Rainier Arms is a dealer. They have stopped selling these  
23 magazines because of the ban. Our two individual plaintiffs  
24 cannot purchase them and are not purchasing them because of  
25 the ban. We don't think discovery would be fruitful on

1 those.

2       Regarding damages, I would say quickly, we said in our  
3 submission that we were planning on amending the Complaint.  
4 We have discussed it some more. I think we could stipulate  
5 away damages. Either way, we are not seeking damages in this  
6 case. We think discovery on that point is also unnecessary.

7           THE COURT: Thank you. Let me ask you a brief  
8 question about the legislative facts or historical context.  
9 What do you envision presenting to the Court in your motion  
10 in support for plaintiff's position on why this history, the  
11 legislative facts support a finding of the current  
12 regulations in violation of the Second Amendment? What would  
13 you be presenting? Some case law? Specific statutes? Are  
14 you going to give me a summary of what you believe the  
15 history incorporates, and who is going to present that  
16 summary of the history?

17           MR. BERGSTROM: Good question. First, I would say  
18 under *Bruen* the burden is actually on the defendants to  
19 present that history, to prove their law is constitutional  
20 under that history.

21           We would intend to rely on publicly available sources:  
22 historical statutes, Law Review articles, things of that  
23 nature to present that history.

24           THE COURT: Let me hear from the defense side, the  
25 State defendants.

1                   MR. HUGHES: This is, in our view, a pretty  
2 extraordinary request. If you look at *Bruen*, it is primarily  
3 a 133-page discussion of history. It is not just statutes  
4 and firearm laws. There is also the historical context in  
5 which those laws arise. For example, there is a long  
6 discussion in the opinion, which is just one example, of  
7 surety laws. The court goes back and forth on whether or not  
8 there was enough evidence in the record of whether the surety  
9 laws actually burdened plaintiff's Second -- someone's Second  
10 Amendment right to carry weapons. The court referenced one  
11 particular Law Review article that "canvassed" -- was the  
12 word they used -- 19th Century newspapers. That's the sort  
13 of historical work that under the *Bruen* test and the history  
14 test we need to do. We need to do it through expert  
15 historians who are specially trained, have the ability to  
16 look at archives, find archival material that Mr. Bergstrom  
17 references, statutes and the like, put that in historical  
18 context.

19                  I note that plaintiffs' Complaint relied primarily on an  
20 article from a lawyer who argues that there is all sorts of  
21 these examples of large-capacity weapons that have been in  
22 common use since time in memorial. Our historians have to  
23 look at those. What they are going to show, not to look at  
24 the merits, but whether or not those weapons are actually  
25 being used, whether there actually is a tradition of use of

1 large-capacity magazines against which there was no  
2 regulation, and whether under *Bruen* it may be inappropriate  
3 to regulate now is a historical question that is going to  
4 require some significant expertise and significant time to  
5 develop a record.

6 On the point of standing, plaintiff says there is  
7 presently no dispute on whether these plaintiffs have  
8 standing. Of course, we haven't taken discovery on that.  
9 That's the reason why there is no dispute. Arguing that the  
10 lack of a present dispute means there should be no discovery  
11 is sort of circular.

12 Unless Your Honor has any questions, I'll leave it at  
13 that.

14 THE COURT: I don't.

15 Did any of the other defendants or intervenor have any  
16 comments on this issue?

17 MS. SUMMERS: This is Ann Summers with King County.  
18 I would add the *Jones vs Bonta* case, which is involving the  
19 California law regarding large-capacity magazines, the Ninth  
20 Circuit, a few weeks ago, remanded that to district court. I  
21 think that is a strong signal as far as the Ninth Circuit is  
22 concerned that fact finding is required on the district court  
23 level. If fact finding is required, I think discovery is  
24 appropriate. It is not a question of things the Court can  
25 take judicial notice of.

1                   THE COURT: All right. Thank you. Anyone else?

2                   Mr. Pekelis.

3                   MR. PEKELIS: Zach Pekelis on behalf of the proposed  
4 intervener. I agree fully with what Mr. Hughes and  
5 Ms. Summers said. I point out just to kind of tether to the  
6 *Bruen* decision that it is not just that the Court is to look  
7 at the historical context, but what does the Court do with  
8 the historical context.

9                   What the *Bruen* court instructed in several cases is  
10 whether "modern and historical regulations impose a  
11 comparable burden on the right of armed self-defense."  
12 Whether that burden is comparably justified are central  
13 considerations when engaging in an analogical inquiry. It is  
14 not that you look at the history. You look at the modern law  
15 and examine whether the benefits and burdens of the modern  
16 law that is challenged are comparable to the historical  
17 analogue benefits and burdens. That's the classic type of  
18 question on which discovery would be most helpful and indeed  
19 necessary.

20                   THE COURT: All right. Thank you.

21                   First, as I indicated just briefly at the beginning, there  
22 is no real motion in front of me to stay discovery. There is  
23 currently nothing that stops discovery.

24                   Having reviewed the issue, I will give you my general  
25 thoughts and then you could always decide if you really want

1 to file the motion. I am going to give you what I think is  
2 going to happen if you file the motion.

3 First, this is an issue many courts are dealing with  
4 because most judges -- there might be some that are outliers  
5 that are truly historians in their prior life or experiences,  
6 but most judges are not historians. We are trained to  
7 research case law, do an analysis, provide our analytical  
8 thinking as to what the issue may be, et cetera. We are not  
9 true historians, we are just not. Quite frankly, chambers  
10 staff that assists the judges, we don't hire historians  
11 either. They are usually individuals that are researchers  
12 when it comes to case law and have good analytical skills and  
13 writing skills.

14 It really puts courts just in a very difficult position to  
15 analyze what the history is because that's not our  
16 background, quite frankly.

17 This *Bruen* decision definitely is new. In my mind, it is  
18 really putting an emphasis on historical context. I am going  
19 to note one of the things it said right at the beginning as  
20 we talked about *Heller* and what was being done in *Heller* and,  
21 of course, they use that kind of analysis I think throughout  
22 the rest of the decision. In reference to *Heller*, they are  
23 noting that in assessing the post-ratification history --  
24 they are referring to the Second Amendment -- we look to four  
25 different types of sources.

1       First, we reviewed how the founding era legal scholars  
2 interpreted the Second Amendment in published writing.  
3       Second, we looked to the 19th Century cases that interpret  
4 the Second Amendment and found they universally support an  
5 individual's right to keep and bear arms. Third, we examined  
6 the discussion of the Second Amendment in Congress and in  
7 public discourse after the support as people debated whether  
8 and how to secure the constitutional rights for newly freed  
9 slaves, and we considered how post-Civil War commentators  
10 understood the rights. It was truly, from what I could tell,  
11 historical research done by historians. In essence, what  
12 they were looking towards.

13       I will also point out -- let's see here -- what  
14 Mr. Pekelis noted, and in addition to the quote that  
15 Mr. Pekelis stated, after that the Supreme Court stated: "To  
16 be clear, analogical reasoning under the Second Amendment is  
17 neither a regulatory straightjacket nor a regulatory blank  
18 check. On the one hand, courts should not 'uphold every  
19 modern law that remotely resembles a historical analogue'  
20 because doing so 'risks endorsing outliers that our ancestors  
21 would never have accepted.' On the other hand, analogical  
22 reasoning requires only that the government identify a  
23 well-established and representative historical analogue, not  
24 a historical twin. So even if the modern-day regulation is  
25 not a dead ringer for historical precursors, it still may be

1           analogous enough to pass constitutional muster."

2           Given that, I think there does need to be some type of  
3           discovery in finding out what historians on those issues that  
4           I just kind of referenced, what historians would opine on  
5           some of those things, what they find in their research. So  
6           it is very difficult for me to say, hey, there should be no  
7           discovery on any of this.

8           Mr. Bergstrom, you and your colleague are welcome, if you  
9           wish, to file a formal motion on this. Maybe I am completely  
10          wrong. Maybe you point to some other reasoning in the  
11          decision that somehow says no, you can just make decisions  
12          without any further discovery.

13          Based on what I am reading right now, I don't think I  
14          would agree with that. Again, you might be able to convince  
15          me otherwise based on what you find, what you point to in the  
16          language of the decision. Right now, seems like it is  
17          probably not likely, to be honest, that I would agree with  
18          you.

19          Things can change, and I might change my mind if you point  
20          to something that is very convincing. Right now, it doesn't  
21          seem to be there.

22          I think discovery does need to be had, some form of  
23          discovery, to help the Court out with the historical contexts  
24          of some of these issues. That is my general thoughts with  
25          regard to discovery.

1       Likewise, same thing with the standing issue. Too early  
2 for me to say. On the one hand, plaintiffs say, you know,  
3 there is a real dispute here. The representative plaintiffs  
4 are no longer able to sell these magazines. Likewise, the  
5 other plaintiffs are not allowed to buy them, et cetera.  
6 Arguably, there is standing. Again, I haven't reviewed this  
7 completely. There might be some discovery that says  
8 otherwise. It is kind of hard to give you my thoughts as to  
9 what I would do without further seeing a motion on that  
10 issue.

11      The bottom line is, there is no stay at this point.  
12 Because there is no stay, right now discovery is open. I  
13 will leave it to the parties if they want to file a formal  
14 motion, as I indicated, for the Court to consider it a bit  
15 further. It is going forward at this point absent an order  
16 from the Court that enters a stay. That is presently not an  
17 order the Court has entered.

18      Okay. That is my thoughts on some of those issues. The  
19 other purpose for these status hearings, in addition to  
20 talking about some of these issues and identifying the trial  
21 dates, I want to make sure we have proper expectations. One  
22 of the things I do in most of my case -- this is a unique  
23 case and more complicated than some of the ones we deal with.  
24 I want to go on with my normal comments which is, first,  
25 focus on professionalism and civility. I have no doubt that

1 everybody is professional and everybody is civil. And when  
2 people interact by telephone, video, or in person, usually  
3 individuals get along quite well and are very civil with each  
4 other.

5 I just ask you be mindful that when you write, you check  
6 before you hit the "send" button in an email or before you  
7 pop the letter in the mail, just make sure how you express  
8 yourself in some of those communications is appropriate.  
9 Because as you all know, if you feel that you are offended by  
10 somebody else's writing or vice versa, that just leads to a  
11 bad relationship and leads to a bad litigation experience.  
12 Although there are strong feelings on these issues, we should  
13 be able to be civil and talk about the issues in a civil  
14 manner and make decisions in a civil manner. Just be mindful  
15 before you send something, double check it. Just double  
16 check it so you are certain not to be using language that  
17 might be offensive to the other side.

18 Make sure you follow the civil rules. Make sure you know  
19 the civil rules as well as the local court rules. Sometimes  
20 individuals are not paying attention to those. I want to  
21 make sure you focus and know the rules.

22 We do plan on issuing a case schedule at this point. We  
23 will identify a trial date here shortly. I am going to  
24 expect the parties follow the case schedule and meet the  
25 deadlines. That means if the deadline says an expert

1 disclosure date of X, that is the date when the disclosure  
2 should occur, absent some type of extreme issue that comes up  
3 that maybe the parties were not aware of, somebody is ill,  
4 some particular personal issue with a family member so they  
5 just weren't able to get to the issue. Other than that, the  
6 parties should be aware deadlines will be enforced.

7 Make sure you submit discovery in a timely fashion. If  
8 you are not satisfied with the responses, make sure you take  
9 steps to actually enforce the discovery that is being -- has  
10 not been responded to or not appropriately responded to in  
11 your mind. Don't wait a couple of months before deciding,  
12 oh, I think I am going to try to enforce my discovery request  
13 because that just causes delay for everyone all around.

14 Expert disclosures, make sure you appropriately disclose  
15 opinions. I don't expect it in this case. Sometimes we get  
16 expert disclosures where there is a whole lot of verbiage  
17 with not much really said. Make sure you appropriately  
18 disclose expert opinions and, of course, the basis for their  
19 opinions. I am not expecting that to be an issue in this  
20 case, given the context of the issues we are dealing with,  
21 but be aware of that.

22 When you disclose your expert opinions, any rebuttal  
23 opinions, if you haven't disclosed an initial expert, make  
24 sure you identify their available dates for depositions at  
25 the outset. Don't wait for the other side to request a date

1 for the deposition. If you wait, inevitably people's  
2 schedules get busy and all of a sudden I am getting a joint  
3 motion that says, "We need more time to complete the  
4 deposition of the plaintiffs' expert and we jointly submit a  
5 request to extend the deadline for discovery," at which point  
6 you will get an order that says, "Denied." Basically, "See  
7 the case schedule." That will be the response.

8 I say that and, you know, obviously again there is always  
9 emergency situations that we will take under consideration.  
10 The reality is if you are going to ask for an extension, you  
11 need to support it. When I say "support it," really support  
12 it. Give me something that says, "We had a personal issue to  
13 deal with and therefore we couldn't comply." Or, "I had  
14 another case scheduled three weeks ago and we went to trial."  
15 That's not sufficient, quite frankly, because everybody has  
16 those type of issues. It is just not sufficient.

17 I do believe I have authority in the Ninth Circuit to  
18 enforce case schedules. This is from *Wong vs Regence of*  
19 *University of California*, 410 F.3d, 1052 at 1060, a Ninth  
20 Circuit 2005 case: "In these days of heavy caseloads, trial  
21 courts in both the federal and state systems routinely set  
22 schedules and establish deadlines to foster the efficient  
23 treatment and resolution of cases. Those efforts will be  
24 successful only if the deadlines are taken seriously by the  
25 parties. The best way to encourage that is to enforce the

1 deadlines. Parties must understand they will pay a price for  
2 failure to comply strictly with scheduling and other orders.  
3 Failure to do so may properly support severe sanctions and  
4 exclusions of evidence."

5 Until the Ninth Circuit dings me on a case on why I don't  
6 extend the deadline and tells me why I did it wrong, my  
7 thought process at this point is I am going to run with this  
8 language and enforce the deadlines. Be aware that you should  
9 expect the deadlines not to be extended.

10 Discovery disputes. I don't want the parties filing an  
11 actual motion for a discovery dispute until after we had a  
12 status hearing on what the dispute might be. More often than  
13 not, I find in a status conference we can either at least  
14 narrow the issues down so I am not getting 30 pages worth of  
15 documents on non-issues and that really there was only one  
16 issue we had to deal with, or we hopefully can resolve the  
17 issue during the status hearing.

18 Usually what I do is I tell you, well, this is what I  
19 think I will do if you were to file a motion, and then the  
20 parties can figure out whether they want to spend time to  
21 file a motion knowing what the Court may likely do.

22 In preparation, though, for the status hearing on a  
23 discovery issue, you will need to submit a joint summary of  
24 what the dispute is; just one document from all parties.  
25 What I want is literally a bullet point summary. Issue

1 No. 1, whatever the issue of dispute may be, followed by  
2 plaintiffs' position, followed by defendant State's position,  
3 followed by all the other parties that are still in the case  
4 at that point's position.

5 It needs to be summarized, bullet points. If you believe  
6 there is a case on point, give me the case name and cite.  
7 You don't need to elaborate. I will go and read the case in  
8 preparation for the hearing and determine in my opinion if it  
9 applies or not. It literally is a bullet point summary of  
10 what the dispute is, what the basis for each party's position  
11 is. It should be no more than three pages.

12 If you file something that is ten pages, we are going to  
13 say no, get it down to a very simple three-page summary of  
14 what it is we are talking about. If we need to take more  
15 time during the status hearing to explain it better, we will  
16 take the time to explain it better. I want the summary  
17 because it is just easier to have the summary and talk about  
18 the issues.

19 That, of course, requires that you actually confer on what  
20 the dispute is. Of course, you'll have to meet by telephone,  
21 video or in person and work together to actually summarize  
22 each party's position into that joint summary. After you  
23 file the joint summary with the Court, you can then contact  
24 the courtroom deputy to schedule the status hearing. We are  
25 pretty prompt. We are pretty prompt on getting a date for

1 discussing the discovery disputes. Also depends on your  
2 calendars, but we are fairly prompt because we want to get  
3 the disputes out of the way as soon as possible and/or have  
4 you file a formal motion if you can't resolve it during a  
5 status hearing.

6 Which leads to the point of, if we can't resolve the  
7 dispute during the status hearing, I will ask for a formal  
8 motion at that point in time and we will decide if we need to  
9 issue a formal order, of course, at that point on the  
10 discovery issue.

11 Any questions about that procedure or any other comments I  
12 have made thus far?

13 Based on what the parties have identified, what we are  
14 looking at as far as an available trial date based on  
15 everybody's schedule is November 6, 2023. We would have, in  
16 essence, expert witness disclosures due by April 1st, 2023,  
17 any rebuttal witness disclosures by April 30th, 2023,  
18 dispositive motion deadline would be July 10, 2023, discovery  
19 deadline June 9th, 2023. Those would be the major dates.

20 There is more information in our scheduling order. Those  
21 are the major dates we would be identifying.

22 Basic question, I guess maybe this is more for the defense  
23 side because they are the ones that say they are planning on  
24 using an expert and possibly the plaintiff may as well  
25 afterward. For now, it looks like the defense has indicated

1       this. April 1, 2023, is that enough time for you to get your  
2 defense experts ready to go and with actual opinions? If it  
3 is not, you need to tell me now so we can build in enough  
4 time. I don't want a motion coming back saying "my expert  
5 needs more time." That's just going to be denied, unless you  
6 tell me now. Is that appropriate or not?

7           MR. HUGHES: Understood. As you know, discovery is  
8 like a handbag, we will fill as much as you give us. We have  
9 been hearing six to nine months. That would be a little less  
10 than seven months out. I think if we could push that to  
11 April 30th as the discovery deadline.

12          THE COURT: The disclosure deadline?

13          MR. HUGHES: I misspoke. If we could push the  
14 disclosure deadline to April 30th, I could tell you with real  
15 confidence there wouldn't be any issues on our side.

16          THE COURT: Mr. Bergstrom, comments from you? I know  
17 you indicated initially you didn't think from the plaintiffs'  
18 side there was a need for experts. Do you think you would  
19 likely, given everything you have heard today, try to go out  
20 and look for an expert?

21          MR. BERGSTROM: It is possible. I can't say with any  
22 certainty right now until we see what sort of expert is put  
23 forward whether we think we need anything to respond. We  
24 think usually these can be responded to just with legal  
25 argument. We would assess that when we saw their reports.

1                   THE COURT: I think what I am going to do is I am  
2 going to build in a little bit more time. That is going to  
3 move the trial date. I am moving the trial date because I  
4 want to make sure I have enough time to review the  
5 dispositive motions, quite frankly. These are going to be  
6 complicated. These are not going to be the normal motions.  
7 I am going to need time in order to review them and hopefully  
8 issue a ruling. Then depending on what the ruling is, I want  
9 to make sure I build in enough time for pretrial stuff. I  
10 don't want the parties working on pretrial stuff until after  
11 I had time to issue dispositive rulings to narrow the issue  
12 down, depending on what the result is, and we will figure it  
13 out at that point.

14                  I am going to ask Gretchen, my courtroom deputy, if we are  
15 looking at a disclose -- initial expert disclosure date of  
16 April 30th, May 1, whatever it is, what would be an available  
17 trial date after that?

18                  THE CLERK: I am here. You said initial expert  
19 disclosure date of?

20                  THE COURT: April 30th. I am bumping everything 30  
21 days. After November 6, 30 days after that, if we have  
22 availability. If not, we go to the next year.

23                  THE CLERK: You have December 4th and December 11th  
24 of 2023 available.

25                  THE COURT: Let's go with December 4th.

1                   THE CLERK: Okay.

2                   THE COURT: That would bump everything approximately  
3 30 days. Not quite April 30th. Maybe like April 28 when you  
4 calculate, whatever the date it spits out.

5                   Will that work, Mr. Hughes? You have to tell me now. I  
6 am telling you, you come back and say, "My expert needs more  
7 time," you are going to get a "no."

8                   MR. HUGHES: We can make that work, Your Honor.

9                   Thank you so much.

10                  THE COURT: We will issue a corresponding order that  
11 identifies the trial date of December 4th. All the dates  
12 will correspond to that afterward.

13                  I think that is all I have to discuss. Is -- oh, I know.  
14 I forgot. There is another case that has possibly some  
15 similar arguments being made. What's the status? Is this  
16 something the parties foresee might need to be consolidated  
17 one way or the other somehow, because obviously I don't think  
18 we want two different rulings from the different courts in  
19 our own state, but maybe I am wrong. Any thought of -- are  
20 the same plaintiff attorneys involved in that one or  
21 different plaintiff attorneys?

22                  MR. BERGSTROM: Different plaintiff attorneys,  
23 Your Honor. At this point, we don't think consolidation is  
24 necessary. The State may have a better idea of where that is  
25 at procedurally. I will let him speak to that. The

1 plaintiffs' position is we don't need to consolidate at this  
2 point.

3 MR. HUGHES: I will accept the invitation,  
4 Your Honor. That case was filed shortly after this one. It  
5 is in a similar posture. No discovery has been taken yet.  
6 We have not yet -- we have answered the Complaint. We  
7 haven't had the scheduling conference. Plaintiff has  
8 informed us he intends to file a motion for preliminary  
9 injunction and intends that to be heard in November of 2022.  
10 That is the status as far as I can tell you. I have no  
11 position on consolidation at this point. I also --

12 THE COURT: It raises my flag. Okay. Just keep them  
13 in mind. We are going to keep it in mind as well. If the  
14 parties think they are similar enough, maybe they should be  
15 at some point. I don't know the answer. I am throwing it  
16 out there because it was listed. All right. Just want to  
17 throw that out there.

18 Any issues that any of the parties feel need to be  
19 identified or at least something else that maybe I didn't  
20 discuss or touch upon that we should point out at this point  
21 for everybody to be aware of?

22 MR. BERGSTROM: Nothing from plaintiff.

23 MR. HUGHES: Nothing from State defendants,  
24 Your Honor.

25 THE COURT: All right. Thank you. As I indicated

1 with regard to the current motions on behalf of King County,  
2 Kitsap and Intervener Alliance, they are on my priority list.  
3 I do hope to get to them on a sooner-than-later basis, but I  
4 can't give you a date right now unfortunately.

5 All right. Thank you. Have a good rest of your  
6 afternoon. I appreciate you all being here and hopefully you  
7 can enjoy the rest of your weekend.

8 MR. BERGSTROM: Thank you.

9 THE COURT: Thank you.

10 (The proceedings adjourned.)

11  
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13 C E R T I F I C A T E

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15

16 I certify that the foregoing is a correct transcript from  
17 the record of proceedings in the above-entitled matter.

18  
19

21 /s/ *Angela Nicolavo*

22 ANGELA NICOLAVO  
23 COURT REPORTER

24  
25